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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,101	03/20/2006	Nigel Hugh Sanders	1307-5 PCT/US	2312
23869 7590 04/25/2011 HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791				
EXAMINER				
COX, STEPHANIE A				
ART UNIT		PAPER NUMBER		
4125				
MAIL DATE		DELIVERY MODE		
04/25/2011		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/533,101

**Applicant(s)**

SANDERS ET AL.

**Examiner**

STEPHANIE COX

**Art Unit**

4125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05/27/2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date 2010/07/26
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aldrich (US Patent No. 4,517,205; May 14, 1985) and in view of Bolliger (“Comparison of Precrystallization of Chocolate”; Feb. 20, 1998).**

**Regarding claims 1-3**, Aldrich discloses a method of preparing molded confectionary articles, comprising the steps of:

- a. Preparing a liquid candy composition which solidifies upon cooling, said liquid composition being a first temperature (column 4, lines 51-65);
- b. Preparing a second liquid composition which solidifies upon cooling (column 3, lines 25-40), said second liquid composition being at a second temperature which is lower than the first temperature(column 4, lines 62-66),

wherein the liquid composition can be chocolate (column 3, lines 30-35);

- c. Co-depositing the liquid candy composition and the second liquid composition in molds (column 3, line 63 to column 4, line 5); and
- d. Cooling the molded compositions in the molds so as to solidify the molded compositions to form molded confectionary articles (column 4, line 66-column 5, line 3). The examiner notes that although Aldrich does not explicitly disclose cooling the compositions, the compositions will intrinsically cool to room temperature following the deposition step.

During the co-deposition step, the second liquid composition (chocolate composition) is deposited through an orifice immediately prior to being introduced into the molds, and the action of feeding the second composition (chocolate composition) through the orifice will subject it to a shear (column 3, lines 55-67). Aldrich is silent as to the degree of the shear.

Bolliger discloses subjecting chocolate to a high shear of up to  $500 \text{ s}^{-1}$  in a narrow annular gap prior to molding the chocolate (p. 284, Table 4 (p.287)).

Since Aldrich clearly discloses that the core composition can be chocolate, it would have been obvious to one of ordinary skill in the art at the time the invention was made to adjust the sheer experienced by the composition in the depositor of Aldrich to a high sheer level such as up to  $500 \text{ s}^{-1}$  disclosed in Bolliger if chocolate is desired, as the process of Bolliger results in a chocolate which has a low viscosity, good flow properties, and excellent bloom resistance (Bolliger; page 282, para. 2).

**Regarding claim 4**, Aldrich discloses that the candy composition is a hard candy composition (column 3, lines 4-10), and that the first temperature is 290 °F (143 °C) (column 4, line 65).

**Regarding claim 5**, Aldrich discloses that the second temperature is 100 °F (38 °C) (column, lines 65-66). In the context of the specification and the claims of the pending application, this temperature is within the range specified by the temperature of “about 40 °C”. *Ortho-McNeil Pharm., Inc. v. Caraco Pharm. Labs., Ltd.*, 476 F.3d 1321, 1326, 81 USPQ2d 1427, 1432 (Fed. Cir. 2007).

**Regarding claim 6**, Aldrich further discloses using milk based products like chocolate, therefore disclosing using milk chocolate, as a core ingredient (column 3, lines 30-35).

**Regarding claim 7**, Aldrich in view of Bolliger does not disclose adding dark chocolate to milk chocolate. However, the term “up to” includes zero as a lower limit, *In re Mochel*, 470 F.2d 638, 176 USPQ 194 (CCPA 1974).

**Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aldrich (US Patent No. 4,517,205; May 14, 1985) and in view of Bolliger (“Comparison of Precrystallization of Chocolate”; Feb. 20, 1998) as applied to claim 1 above, and further in view of Franke (DE 19503635, English translation and Derwent abstract; Nov. 16, 1995).**

**Regarding claim 8**, Aldrich and Bolliger disclose the method of claim 1, but fail to disclose adding fat to the chocolate composition prior to depositing it in molds.

Franke discloses the production of chocolate compositions wherein liquid cocoa butter (i.e. fat) is added in an amount to comprise 4-15% of the chocolate mass (Derwent abstract, para.2) in the shearing mixer, therefore before being deposited in molds (Franke translation, page 3, para. 12).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Aldrich and Bolliger wherein additional fat is added to the chocolate composition, because adding fat transforms the chocolate to that of a mixture which is pumpable, thus giving the chocolate favorable flow properties (Franke translation, page 1, para. 10; page 3, para. 12).

**Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aldrich (US Patent No. 4,517,205; May 14, 1985) and in view of Bolliger ("Comparison of Precrystallization of Chocolate"; Feb. 20, 1998) as applied to claim 1 above, and further in view of Cully (WO 96/39045; Dec. 12, 1996).**

**Regarding claim 11**, Aldrich and Bolliger disclose the method of claim 1, but fail to disclose subjecting the chocolate composition to a pre-shear prior to depositing it in molds.

Cully discloses a method for processing chocolate which includes subjecting the chocolate to high shear mixing prior to molding (page 2, lines 1-25; page 6, lines 5-10). As this process is "mixing", it is therefore considered subjecting the chocolate composition to pre-shear in addition to the high shear the chocolate composition is exposed to in the depositor immediately before molding.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the method of Aldrich and Bolliger with the application of pre-shear as disclosed by Cully because subjecting the chocolate to pre-shear reduces the viscosity of the chocolate, resulting in improved smoothness (Cully, page 1, lines 3-8).

**Regarding claims 12**, the pre-shear of  $3000\text{-}5000\text{ s}^{-1}$  as disclosed by Cully overlaps the claimed range of  $100\text{-}5000\text{ s}^{-1}$  (page 6, lines 5-10). This disclosed range is considered to render the claimed range obvious due to the substantial specificity of the disclosure of an exact endpoint ( $5000\text{ s}^{-1}$ ) in addition to Cully's disclosure covering nearly 50% of the range claimed by the applicant.

**Regarding claim 13**, the pre-shear of Cully is greater than the high shear of  $500\text{ s}^{-1}$  as disclosed by Aldrich and Bolliger.

### ***Response to Arguments***

No further arguments were set forth in RCE filed on 07/26/20.

### ***Conclusion***

**No claims are allowed.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEPHANIE COX whose telephone number is (571)270-1075. The examiner can normally be reached on Monday through Friday 7:30AM to 5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571)272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Stephanie Cox  
/S. C./  
Examiner, Art Unit 4125

**/Gordon R Baldwin/**

**Primary Examiner, Art Unit 1784**